

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,  
Complainant,

vs.

JOE M. MITCHELL, JR.  
Respondent.

1739  
FILED  
JAN 25 1990

CLERK, SUPREME COURT  
Deputy Clerk

S E C O N D E D  
A M E N D E D

REPORT OF REFEREE

1. Summary of Proceedings: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on the following date: September 18, 1989.

The following attorneys appeared as counsel for the parties:

For The Florida Bar JOHN B. ROOT, JR.

For The Respondent ANDREW GRAHAM & JERROLD BROSS

11. Findings of Fact: The respondent previously admitted to the facts alleged in the Complaint and no further testimony was taken concerning the factual allegations.

111. Recommendation as to Whether or Not the Respondent Should be Found Guilty: I recommend that the respondent be found guilty of violating Rule of Professional Conduct 4-5.3(b) and 4-5.3(c). The respondent failed to make reasonable efforts to ensure that his nonlawyer personnel conducted themselves in a manner compatible with the professional obligations of the respondent. Specifically, the respondent did not have office procedures in place to adequately inform his secretary concerning the storage of "closed" files. No time periods were established to regulate the length of retention of "closed" files. There was no separate holding area for "closed" files and there was no review of "closed" files before destruction. The respondent did not adequately supervise the return of court documents to the courthouse, with the result that original court documents were destroyed when "closed" files were destroyed. Finally, the respondent presented forged documents to a court. These documents were forged by the respondent's secretary due to the lack of supervision and control exercised by the respondent. Taken in a light most favorable to the respondent and his secretary, the forged documents were produced in order to duplicate documents that had been destroyed because of the shoddy recordkeeping practices of the office of the respondent. Taken in another light, the secretary completely fabricated the documents to bolster her employer's case in court. In either event, the respondent did not attempt to verify the documents by checking his own office files to review those cases before presenting them to the court.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend that the respondent be suspended from the practice of law for a period of 15 days with reinstatement at the end of period of suspension as provided in Rule 3-5.1(e), Rules of Discipline, provided that the respondent has complied with the following special conditions:

1. Payment of costs incurred by the Florida Bar.
2. A written office policy for the retention and disposition of "closed" files that is approved by the Orlando Office of the Florida Bar.

V. Personal History and Past Disciplinary Record: After finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.5(k)(1)(4), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Age: 46

Date admitted to Bar: 1968

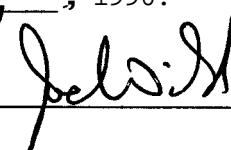
Prior disciplinary convictions and disciplinary measures imposed therein: Private reprimand, 1974

VI. Statement of Costs and Manner in Which Cost Should be Taxed: find the following costs were reasonably incurred by the Florida Bar.

A. Grievance Committee Level Costs:	
1. Transcript Costs	\$ 1,297.95
2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 238.83
B. Referee Level Costs	
1. Transcript Costs	\$ 291.30
2. Bar Counsel/Branch Staff Counsel Travel Costs	\$ 52.01
C. Administrative Costs	\$ 500.00
D. Miscellaneous Costs	
1. Investigator Costs	\$ 918.93
2. Witness Fees	\$
<b>TOTAL ITEMIZED COSTS:</b>	<b>\$ 3,299.02</b>

It is apparent that other costs have or may be incurred. It is recommended that the foregoing itemized costs be charged to the respondent.

Dated this 22 day of January, 1990.

  
\_\_\_\_\_  
Referee

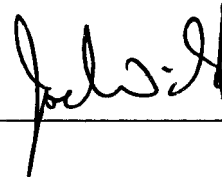
Certificate of Service

I hereby certify that the foregoing has been mailed to the following:

John B. Root, JR., Esquire  
The Florida Bar  
880 North Orange Avenue, Suite 200  
Orlando, Florida 32801

Andrew A. Graham, Esquire  
Reinman, Harrell, et al.  
P.O. Box Drawer 639  
Melbourne, Florida 32902

Referee

A handwritten signature in black ink, appearing to read "J. Root", is written over a horizontal line. The signature is cursive and somewhat stylized.